IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 470 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

DR.ARUNKUMAR B VYAS and Others.

Appearance:

Mr. M.A. Bukhari, APP for the appellant State.

NOTICE SERVED for Respondent No. 1

MR SC THAKKAR for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 08/07/1999

ORAL JUDGEMENT

The respondents, who were placed on trial relating to the offence punishable under Section 411 read with Section 34 of the Indian Penal Code in the Court of the Judicial Magistrate (F.C.) at Gandhinagar, came to be acquitted on 30th November 1990 by the Judicial Magistrate, delivering the judgment in Criminal Case No. 5409 of 1984. Being aggrieved by such order of acquittal, the prosecution has preferred this appeal.

2. From the Central Store at Gandhinagar, the medicines having the mark of Gujarat Government are supplied to different Government hospitals in the State. For purchasing the medicines, tenders are invited and the company whose tender is accepted has to supply the medicines only to the Central Medical Store at Gandhinagar. It cannot sell the medicines to any other medical practitioners or other private hospitals. The Director, Food & Drug Control received the information that the respondent No.1 running his private dispensary was in possession of 1000 Paracetamol tablets, 1000 Analgin tablets, and 1000 Ampicillin Capsules having the mark of Gujarat Government. On the basis of this information, the Drug Inspector, Mr. Dixit with his members of the staff had gone to the dispensary of respondent No.1. He could see on search being taken that the information received was true. The medicines as per the information were found from the dispensary. The respondent No.1 when asked, explained that his brother Devendrabhai Vyas was dealing in purchase of the medicine and in the absence of his brother he is receiving the medicines when delivery thereof is effected. The respondent No.1 also informed Mr. Dixit that the respondents No. 2 to 4 were supplying the medicines to him. Mr. Dixit then realized that the respondent No.1 had received the stolen medicines and had kept the same in his dispensary. He had therefore a reason to believe, when the medicines meant solely for the Government hospitals were found from the possession of the respondent No.1 that he was the recipient of the stolen goods and had thereby committed the offence punishable under Section 411 read with Section 34 of the Indian Penal Code. Investigation was then made and a complaint directly before the Judicial Magistrate (F.C.) at Gandhinagar was filed by the Drug Inspector, Govindbhai P. Patel. The evidence was recorded. A charge was framed at Ex. 46 and evidence that was tendered by the prosecution thereafter was also recorded. Appreciating the evidence, the learned Judicial Magistrate found that the charge levelled against the respondents was not proved beyond reasonable doubt. He therefore acquitted the respondents on 30th November 1990. It is against that order the present appeal challenging the legality and validity of the acquittal is filed by the prosecution.

3. Mr. Bukhari, learned APP representing the appellant State, submits that though there is sufficient evidence on record the learned Judge misdirecting himself erroneously appreciated the evidence and reached to a conclusion not at all warranted by the materials on

record. He should not have unnecessarily prowled about for imaginative doubts just for awarding acquittal. The reasons assigned by the learned Magistrate are also not logical and appealing. According to him, the learned Judge ought to have convicted the respondents when the prosecution leading the cogent and reliable evidence established the charge levelled against the respondents.

4. It should be noted that the prosecution has come forward with the case that the respondents having the common intention conspired and dishonestly received the stolen medicines and thereby committed the offence punishable under Section 411 read with Sec. 34 of the Indian Penal Code. In view of such case, what are the requirements of law to be satisfied by the prosecution to establish the charge must be borne in mine. To constitute the offence under Section 411 of the Indian Penal Code, over and above the dishonest possession of the stolen property, it should also be shown that the accused was having full knowledge of or at least he had a reasonable belief that the property he was receiving was the stolen property or obtained in one of the ways specified in Sec. 410 I.P. Code viz., extorted, robbed, misappropriated or in respect of which criminal breach of trust has been committed. It is not sufficient to show that the accused was negligent or that he had a reason to suspect that the property was stolen or that he did not make sufficient inquiry to ascertain whether it had been honestly acquired. As held by the Supreme Court in the case of Trimbak vs. State of M.P. - AIR 1953 S.C. 39, it is the duty of the prosecution in order to bring home the guilt of the accused to prove that (1) the stolen property was in the possession of the accused; (2) some person other than the accused had possession of the property before the accused got the possession; and (3) the accused had the knowledge that the property was the stolen property. On perusal of evidence when perused nowhere I find the presence of all the required ingredients constituting the offence under Sec. 411 of the Indian Penal Code. Reading the evidence, it appears that the prosecution has on presumption proceeded against the respondents and initiated the criminal action. No doubt, the possession is clearly proved because the medicines and drugs referred to hereinabove were found from the dispensary of respondent No.1. The respondent No.1 therefore can be said to be in possession of the drugs and medicines having the mark of Government of Gujarat, but the proof of fact of possession is not enough. It must be shown that the properties found in possession of the accused was the stolen property and the accused received the same or retained the same with

dishonest intention. The evidence does not any where point to the fact that the medicines and drugs found were the stolen articles. Whether the theft of these articles and things was ever committed prior to the search of the dispensary made by the Drug Inspector, was required to be established by the prosecution but no evidence in this regard is led. On query, the ld. APP also tried his best going through the evidence for more than once, but he also failed to point out the evidence regarding theft of drugs and medicines found from the possession of respondent No.1. It was incumbent upon the prosecution to lead the evidence to show that the medicines and drugs found were initially in the possession of the Drug Inspector or in the possession of the Store-keeper or in the possession of the authority of the Government Hospital either at place `A' or at place `B' or any other place in the State or on behalf of the Govt. the company supplying the medicines was in possession and from such possession some one committed theft thereof and then respondent received the same with full knowledge that the medicines they were purchasing were the stolen goods and retained the same with dishonest intention. No such evidence about the posession and theft of drugs and medicines found is led. On query it is made clear that theft of the medicines from the possession of Govt. or Govt Store or from any Hospital etc., is not committed. The theft, the basic requirement is when not proved for want of evidence, the question of dishonestly receiving the stolen property does not survive and arise for consideration, because failure to prove the fact of theft uproots the case of dishonestly receiving the stolen property.

5. There is also no evidence to show that in this case the circumstances were such that the accused as a reasonable man must have felt convinced that the medicines with which he was dealing were the stolen property. Omission to inquire on the part of the doctor so as to ascertain whether the property was stolen will not be a ground to attribute the knowledge to the doctor, or any of the respondents.

6. Even for a while if it is believed that the theft of the drugs and medicines from the Central Store took place, one cannot jump to the conclusion that the respondents are the recipients of the stolen property dishonestly because the presumption will arise if soon after the theft the accused is found in possession of the stolen goods. If months have passed after the theft, the presumption cannot arise because the articles are such which may go on changing hands periodically or at the

interval of few days. It was, therefore, necessary for the prosecution to prove that within a day or two prior to the search of the dispensary was made, theft of medicines and drugs was committed but unfortunately prosecution has led no evidence in this regard. The crucial aspect of the case namely, theft having been committed is not proved as there is no iota of evidence. When theft, one of the essential requirements is not established, the offence of dishonestly receiving the stolen property cannot be said to have been constituted or committed. In view of the matter, the learned Magistrate was perfectly right in reaching the conclusion that the offence alleged is not proved and the respondents were entitled to acquittal.

7. For the aforesaid reasons, the appeal fails and is liable to be dismissed. The same is accordingly dismissed, maintaining the order of acquittal.

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